Supreme Court, U.S.
FILED
JAN 15 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-1035

IN THE

Supreme Court of the United States

October Term, 1987

JAMES P. JOYCE, JR., *Appellant,*

vs.

LEWIS BOLT & NUT COMPANY,
SELF INSURED,

and

LEWIS BOLT & NUT COMPANY AND
GREAT AMERICAN INSURANCE COMPANY,

and

HMO MINNESOTA, and
NORTH AMERICAN LIFE ASSURANCE COMPANY,

and

THE SPECIAL COMPENSATION FUND,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

Motion To Dismiss Or Affirm

RAYMOND W. FITCH
Fitch, Johnson, Larson & Walsh
15 North 16th Street
Minneapolis, Minnesota 55403
(612) 332-1023
Counsel For Appellee -- Lewis Bolt & Nut Company & Great American Insurance Company

1988 — Northwest Printing Co., 3010 2nd St. No., Minneapolis, MN 55411 — 588-7506

TABLE OF CONTENTS

	Page
Motion to Dismiss or Affirm	1
State Statute Involved	2
Additional Statement of Facts	2
Argument	3
Conclusion	7

TABLE OF AUTHORITIES

Cases:

Energy Reserved v. Kansas P & L, 549 U.S. 400, 103 S. Ct. 697, 76 O.G.R. 393, 74 L.Ed. 2d 569 (1983)	5
Home Bldg. & Loan Assn. v. Blaisdell, 290 U.S. 398, 54 S. Ct. 231, 78 L.Ed. 413 (1934)	5
Memoirs v. Massachusetts, 383 U.S. 413, 16 L.Ed. 2d 1 (1966)	6
Ochiltree v. Iowa R. Contracting Company, 21 Wall. 249, 22 L.Ed. 546 (1875)	6
Paris Adult Theatre I v. Slaton, 413 U.S. 49, 93 S. Ct. 2628, 37 L.Ed. 2d 446 (1983)	6
South Carolina ex rel Phoenix Mutual v. McMaster, 237 U.S. 63, 35 S. Ct. 504, 59 L.Ed. 839 (1915)	7
Sperry & Hutchinson v. Rhodes, 220 U.S. 502, 31 S. Ct. 490, 55 L.Ed. 561 (1911)	6

Constitution and Statute:

United States Constitution, Article I, § 10	5
Minn. Stat. § 176.101 Subd. 3 (1983)	2
Minn. Stat. § 176.101 Subd. 3(e) (1984)	2

IN THE

Supreme Court of the United States

No. 87-1035
October Term, 1987

JAMES P. JOYCE, JR.,

Appellant,

vs.

LEWIS BOLT & NUT COMPANY,
SELF INSURED,

and

LEWIS BOLT & NUT COMPANY AND
GREAT AMERICAN INSURANCE COMPANY,

and

HMO MINNESOTA, and
NORTH AMERICAN LIFE ASSURANCE COMPANY,

and

THE SPECIAL COMPENSATION FUND,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

MOTION TO DISMISS OR AFFIRM

The appellee, Lewis Bolt & Nut Company and Great American Insurance Company moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of the State of Minnesota on the grounds (1) the appeal does not present a substantial fed-

eral question and (2) it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

STATE STATUTE INVOLVED

The appeal raises the question of whether the Workers' Compensation Statute for the State of Minnesota, M.S. §176.101, Subd. 3 (pre-1984) or Subd. 3e (post-1983) may be amended to limit the amount of time for which temporary total disability is paid for injuries which occur after the statutory change.

For injuries and disability occurring prior to January 1, 1984, there was no time limit for temporary total disability payments. In 1983, the Minnesota Legislature provided that for injuries occurring after December 31, 1983, temporary total disability payments would only be payable up to 90 days after "maximum medical improvement."

The appeal contends such a change violates the equal protection clause of the United States Constitution.

ADDITIONAL STATEMENT OF FACTS

The appellant sustained five work-related injuries prior to January 1, 1984, two of which resulted in permanent disability.

The Minnesota Supreme Court significantly pointed out,

> "The employee had, however, returned to work after the October 1983 [fifth] injury, and until the injury of June 15, 1984, the employee was not totally disabled." (p. B-7, Appellant's Jurisdictional Statement.)

Injury number six, that of June 15, 1984 (which obviously occurred after the statutory change) caused the new disability:

> "On the occurrence of the separate new injury the rights available under the statute in effect on June 15, 1984, superseded those still contingent rights provided by the 'old' statute." (Minnesota Supreme Court Decision at B-7, Jurisdictional Statement.)

Appellant's "Statement of the Case" at Page 6 misconstrues the factual situation: in order to obtain temporary total disability, an employee must (1) sustain a "personal injury," and (2) sustain *disability*. The *disability* in the instant case did not occur until caused by the 1984 injury. Any potential for such benefits prior to the June 15, 1984 incident was a "contingency" based on the existence or nonexistence of "disability" as indicated by the Minnesota Supreme Court.

ARGUMENT

The case fails to present a substantial federal question and it is manifest that the questions presented are so unsubstantial as to not need further argument.

Appellant, in his argument, fails to recognize two separate legal entities — *Injury*, and *Disability*. He suggests (p. 7, Jurisdictional Statement)

> "If [an employee] was injured in 1981 . . . he would be entitled to ongoing temporary total benefits indefinitely."

Not so. He must also have ongoing *disability* in order to obtain such benefits. And in the instant case his *disability*

had ceased and was begun/caused by the new injury under the new statute. Such disability is subject to the law applicable to the new injury.

Counsel suggests

> "If appellant had only been injured the first five times, all pre-1984 injuries, he would have been entitled to benefits as prescribed by the law in effect on the date of each of the five injuries" (p. 7, Jurisdictional Statement).

True. But absent the June 15, 1984, injury, the employee would have thereafter still been working and therefore receiving no benefits at all.

The contractual aspect of the case is raised at p. 8 of the Jurisdictional Statement. This is clearly met and answered by the Minnesota Supreme Court discussion at p. B-5-6:

The Workers' Compensation Acts are, of course, some of the earliest examples of modern social legislation. By law, workers' in the early 1900's were forced to give up their right to sue an employer under Common Law in return for the legislative-controlled benefits. As the Minnesota Supreme Court said,

> "[T]he rights and liabilities created by the Workers' Compensation Act are imposed on the employer relationship pursuant to the police power, independently of any actual or implied contract [citing case] [but with the theory] that the statute becomes a part of the contract of employment [citing case]" (p. B-5 Jurisdictional Statement).

In discussing the contract clause of the United States Constitution (Article I §10), Justice Blackmun recently held

> "Although the language of the Contract Clause is facially absolute, its prohibition must be accommodated to the inherent police power of the State 'to safeguard the vital interest of its people.' Home Bldg. & Loan Assn. v. Blaisdell, 290 US 398, 434, 78 L Ed 413, 54 S Ct 231 (1934). In Blaisdell, the Court approved a Minnesota mortgage moratorium statute, even though the statute retroactively impaired contract rights. The Court balanced the language of the Contract Clause against the State's interest in exercising its police power, and concluded that the statute was justified" (*Energy Reserved v. Kansas P & L*, 549 U.S. 400, 103 S. Ct. 697, 76 O.G.R. 393, 74 L.Ed. 2d 569 (1983).

The Minnesota Supreme Court in the instant case went on to say that the "controlling event" as far as the contractual phase of the law is concerned, is the new injury (if it is, as here, a permanent substantial cause of the disability):

> "If . . . the employee suffers a new, separate injury, that new injury supersedes the earlier injury as the controlling event, and the law in effect on the date of the new injury supersedes the law in effect at the time of the earlier injury" [citing Professor Larson's National Treatise and another Minnesota case] (p. B-6, Jurisdictional Statement).
>
> "While it is true that employee had a right after the work-related injury of October 16, 1983, to benefits during temporary total disability substantially caused by his October of 1983 injury and any earlier work-related injuries, the right was contingent on employee

being temporarily totally disabled and did not vest until the causal relationship between his disability and the prior work-related injuries had been proved" (Minnesota Supreme Court Decision at p. B-6-7 of Jurisdictional Statement).

Long ago, our Federal Supreme Court said the constitutional guarantee against the impairment of contracts refers to

> ". . . a valid subsisting obligation, not a contingent or speculative one" (*Ochiltree v. Iowa R. Contracting Company*, 21 Wall. 249, 22 L.Ed. 546 (1875)).

Mr. Justice Holmes said in *Sperry & Hutchinson v. Rhodes*, 220 U.S. 502, 31 S. Ct. 490, 55 L.Ed. 561 (1911) at p. 563 of 22 L.Ed.

> "But the 14th Amendment does not forbid statutes and statutory changes to have a beginning and thus to discriminate between the rights of an earlier and later time."

More recently, our Federal Supreme Court has often repeated

> "We do not sit as a super-legislature to determine the wisdom, need, and propriety of laws that touch economic problems, business affairs, or social conditions" *Memoirs v. Massachusetts*, 383 U.S. 413 at 462, 16 L.Ed. 2d 1 (1966); *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 93 S. Ct. 2628, 37 L.Ed. 2d 446 (1983).

In the instant case, the Minnesota Legislature has changed the amount of benefits due as a result of a post-1983 injury. All people injured before 1984 are subject

to the same benefits; all people injured after 1983 are also subject to the same benefits:

> "The equal protection of the laws . . . means subjection to equal laws applying alike to all in the same situation . . ." (*South Carolina ex rel Phoenix Mutual v. McMaster*, 237 U.S. 63, 72, 35 S. Ct. 504, 59 L.Ed. 839 at p. 843 of 59 L.Ed. (1915)).

CONCLUSION

Wherefore, appellee respectfully submits that the question upon which this case depends is so unsubstantial as to not need further argument and appellee respectfully moves the Court to dismiss this appeal or, in the alternative, to affirm the judgment entered in the cause by the Supreme Court of Minnesota.

Respectfully submitted,

RAYMOND W. FITCH
Counsel for Appellee—Lewis Bolt & Nut Company and Great American Insurance Company
Atty. Reg. No. 2966X
(U.S. Supreme Court applied for)
15 North 16th Street
Minneapolis, MN 55403
Phone: (612) 332-1023